

**DEC 01 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

ALBERT SAINT IZUEL,

Petitioner - Appellant,

v.

C. A. TERHUNE, Director California  
Department of Corrections; et al.,

Respondents - Appellees.

No. 02-55073

D.C. No. CV-00-01717-GAF

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Gary A. Fees, District Judge, Presiding

Submitted August 15, 2003\*\*

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

Albert Saint Izuel appeals from the district court's denial of his habeas petition. We granted a certificate of appealability on the issue "whether the prosecutor failed to reasonably investigate, pursuant to Kyles v. Whitley, 514 U.S.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

419, 437 (1995), the Upjohn Company for any exculpatory evidence it knew.” We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

Habeas relief is available to a state prisoner only when the state court’s decision is “contrary to, or involve[s] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States” or is “based on an unreasonable determination of the facts in light of the evidence presented at the state Court proceeding.” 28 U.S.C. § 2254(d). We conclude that the state court did not unreasonably apply clearly established federal law in ruling that the prosecutor did not violate Brady v. Maryland, 373 U.S. 83 (1963). It is undisputed that the prosecutor was not aware of the evidence that Izuel characterizes as exculpatory. In Kyles, the Court held that a prosecutor has “a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” 514 U.S. at 437. Here, the state court found that Upjohn was not acting on the government’s behalf, but instead provided background information. We cannot say that this was an unreasonable determination of the facts in light of the evidence presented to the state court.

AFFIRMED.